THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

REV. W.P. M.P. No. 9973 OF 1997

IN

W.P. NO. 5248 OF 1991

Date: 09.04.2007

Between:

V. Koteswara Rao.

... Appellant-Respondent No.2 in W.P.

and

M. Umamaheswara Rao and another.

... Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

REV. W.P. M.P. No. 9973 OF 1997

W.P. No. 5248 OF 1991
AND

CONTEMPT CASE No. 1372 of 1996

ORDER:

The Headmaster M.P. Elementary School, Atukuru Village, G. Konduru Mandal, Krishna District has filed this review petition raising several grounds.

The only question which, however, necessitates examination is whether the M.P. Elementary School was handed over to the Mandal Praja Parishad G. Konduru Mandal, with effect from 01.04.1991, for in such an event failure to array the Mandal Praja Paraishad as a respondent in the writ petition would necessitate dismissal of the writ petition on the ground of non-joinder of necessary parties. It is specifically stated in the review petition that, since the school was handed over to the Mandal Praja Parishad on 01.04.1991, the jurisdiction of this Court was ousted and that the proper forum was the A.P. Administrative Tribunal. The fact, that it was handed over the Mandal Praja Parishad with effect from 01.04.1991 vide proceedings of the Mandal Development Officer on 01.04.1991, is reiterated in paragraph 5 of the review petition.

Sri P. Raghavendra Reddy, learned Counsel for the review petitioner, would contend that, since the Mandal Praja Parishad, which had taken over the school on 01.04.1991 has not been arrayed as a respondent in the writ petition and as any relief against the Mandal Praja Parishad could have been sought only by invoking the jurisdiction of the Tribunal, under Section 15 of the A.P. Administrative Tribunals Act, the order of the learned Single Judge, in W.P. No. 5248 of 1991 dated 16.07.1996, was required

to be reviewed as there is an error apparent on the face of the record and that the said order is liable to be set aside. Learned Counsel would further submit that, in W.P. No. 5248 of 1991 dated 16.07.1996, wherein the District Educational Officer and the Hindu Elementary school were alone arrayed as respondents, the petitioner was directed to be reinstated with 50% back wages. C.C. No. 1372 of 1996 was filed for deliberate and willful violation of the orders passed in W.P. No. 5248 of 1991 dated 16.07.1996 wherein the Chief Executive Officer, Zillaparishad and the Mandal Development Officer, Mandal Praja Parishad, G. Konduru were also arrayed as respondents in the contempt case. Learned Counsel would submit that, in the affidavit filed in support of the contempt case, nothing is stated as to why the Chief Executive Officer, Zilla Parishad and the Mandal Development Officer, who were not arrayed as respondents in the writ petition, were impleaded as respondents in the contempt case.

Sri Subbarao Koorapati, learned Counsel appearing on behalf of the respondent-writ petitioner, would contend that the review petition is not maintainable. Learned Counsel would submit that the review petitioner had not even chosen to file a counter-affidavit in the writ petition and that the District Educational Officer had alone file his counter affidavit. Learned Counsel would submit that, since the review petitioner cannot be said to be aggrieved by the order and inasmuch as there is no error apparent on the face of the record, the review petition is liable to be dismissed. Learned Counsel would submit that the ground now raised, seeking review of the order passed in W.P. No. 5248 of 1991, was

not raised earlier and, since the issue now raised is an entirely new issue, no interference is called for in review proceedings. Learned Counsel would place reliance on **Nehali Panjiyara Vs. Shyama Devi**[1].

In this context it is necessary to note that an additional counter-affidavit was filed in W.P. No. 5248 of 1991 on behalf of the District Educational Officer on 15.04.1993, wherein it is specifically stated that the school under the aided management had been transferred to the Mandal Praja Parishad management and the same had been taken over by the Mandal Praja Parishad, G. Konduru with effect from 01.04.1991. The learned Judge, in his order in W.P. No. 5248 of 1991 dated 16.07.1996, has also recorded this fact. The relevant portion of the order reads thus:

> ".....The respondent has filed a counter affidavit stating that the correct procedure for appointment was not followed and that there was no proof that no candidates were sponsored by the Employment Exchange as only they should be appointed and further that **the Management of the school has been taken over by the Mandal Praja Parishad G. Konduru, and hence, the appointment is not binding on the Government……..." (emphasis supplied)**

Having noted the contention of the respondents that the management of this school had been taken over by the Mandal Praja Parishad, the learned Judge failed to consider the consequences of the Mandal Praja Parishad not being arrayed as a respondent in the writ petition. The order of the learned Judge suffers from an error apparent on the face of the record and necessitates being set aside.

Sri Subbarao Koorapati, learned Counsel for the respondent-writ petitioner, would contend that the additional

counter-affidavit runs contrary to the averments in the counter-affidavit filed earlier. Learned Counsel would draw attention of this Court to the initial counter-affidavit, filed by the District Educational Officer in the writ petition, wherein, while referring to the fact that instructions had been issued for the school to be taken over by the Mandal Praja Parishad, it is specifically stated that the transfer of the management had not yet been effected. Learned Counsel would contend that, inasmuch as the school was not taken over by the Mandal Praja Parishad on 01.04.1991, the question of the Mandal Praja Parishad being arrayed as a respondent in the writ petition would not arise. I am afraid I cannot agree. The learned Judge, having noted the contention of the respondent that the school had been taken over by the Mandal Praja Parishad failed to examine whether the school was indeed taken over by the Mandal Praja Parishad on 01.04.1991 prior to the filing of the writ petition or subsequent thereto. The learned Judge has not dealt with this aspect at all. Further, while the Chief Executive Officer of the Zilla Parishad and thee Mandal Development Officer have been shown as respondents 1 and 3 in the contempt case, nothing is stated in the affidavit filed in support of the contempt case as to the date on which the school was taken over by the Mandal Praja Parishad or why the Chief Executive of the Zilla Parishad and the Mandal Development officer have been impleaded as respondents 1 and 3 in the contempt case though they were not arrayed as respondents in the writ petition. While the submission of Sri Subbarao Koorapati, learned Counsel for the respondent-writ petitioner, that the review petitioner cannot be said

to be aggrieved by the order passed by the learned judge, if his contention that the school was taken over by the Mandal Praja Parishad on 01.04.1991 is accepted as true, cannot be said to be without merit, it is necessary to note that under Order 47 Rule 1 C.P.C. the order is required to be reviewed where there is an error apparent on the face of the record. The very fact that it was specifically contended that the school was taken over by the Mandal Praja Parishad on 01.04.1991, prior to the filing of the writ petition on 09.04.1991, would have necessitated the Mandal Praja Parishad being arrayed as a respondent in the writ petition. Any relief granted in the writ petition against the school under the control of the Mandal Praja Parishad, without the Mandal Praja Parishad being arrayed as a respondent in the writ petition, would be an error apparent on the face of the record as the writ petition ought to have dismissed on the ground of non-joinder of necessary parties.

In **Shyama Devi**[1], the Supreme Court held that when a review petition raises an entirely new point, which was not a point in issue in the original proceedings, no interference was called for in review proceedings. The said judgment has no application to the facts of the present case. The fact that the school had been taken over by the Mandal Praja Parishad on 01.04.1991 was specifically pleaded in the additional counter-affidavit filed in the writ petition and has, in fact, been taken note of by the learned single judge in his order dated 16.07.1996. This point was raised earlier in the writ petition and has not been raised for the first time in the review petition. The judgment in **Shyama Devi**[1] has,

therefore, no application. The Mandal Praja Parishad was a necessary party to the writ petition. Failure on the part of the writ petitioner to array the Mandal Praja Parishad as a respondent would have necessitated the writ petition itself being dismissed on the ground of non-joinder of necessary parties. The review petition is allowed. The order in the writ petition is accordingly set aside. The writ petition is dismissed on the ground of non-joinder of necessary parties. Since the writ petition is dismissed, the contempt case, filed for willful and deliberate violation of the order passed therein must also be dismissed.

It is, however, made clear that the order now passed would not preclude the petitioner from invoking the jurisdiction of the A.P. Administrative Tribunal and seeking appropriate relief against the Mandal Praja Parishad. Sri Subbarao Koorapati, learned Counsel for the respondent-writ petitioner, would seek indulgence of this Court to direct maintenance of *status quo* since the writ petitioner has been continuing in the school for the past more than a decade. Since the writ petition has itself been dismissed, it is not proper for this Court to grant any such relief. It is, however, open to the petitioner to approach the Tribunal and seek appropriate relief. No costs.

_____

Date: 09.04.2007 RAMESH RANGANATHAN, J

MRKR

[1] (2002)10 SCC 578